

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

RACHEL KIDWELL,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04C-05-207-PLA
)	
DELAWARE HOSPITAL, INC.,)	
t/d/b/a WILMINGTON HOSPITAL)	
and CHRISTIANA CARE HEALTH)	
SERVICES, INC. t/d/b/a)	
WILMINGTON HOSPITAL,)	
)	
Defendants.)	

Submitted: October 4, 2006
Decided: January 19, 2007

ON DEFENDANTS' MOTION IN LIMINE.
GRANTED.

Joseph M. Jachetti, Esquire, Kenneth R. Schuster & Associates, P.C.,
Wilmington, Delaware. Attorney for Plaintiff.

Amy A. Quinlan, Esquire, Morris James LLP, Wilmington, Delaware.
Attorney for Defendants.

ABLEMAN, JUDGE

This is a personal injury action in which the plaintiff, Rachel Kidwell (“Kidwell”), claims she incurred injuries after falling down a flight of stairs on the premises of Delaware Hospital, Inc. t/b/d/a Wilmington Hospital and Christiana Care Health Services, Inc. t/b/d/a Wilmington Hospital (collectively “Defendants”). Kidwell alleges the stairs, which are located outside, were wet and slippery due to the watering of vegetation and other landscaping activity nearby. In an effort, presumably, to replicate the flow of water down the staircase and/or track Kidwell’s fall down the stairs, her counsel created a videotape which, among other things, depicts a ball rolling down the same staircase where the accident occurred. Defendants have now filed this motion in limine to exclude the introduction into evidence of that portion of the videotape.¹

Defendants contend that the videotape should be excluded because Kidwell has identified no witness who could substantiate the relevance of the ball demonstration or opine that such a demonstration would in any way simulate the flow of water under similar circumstances. Defendants also argue that there is nothing in the record to indicate where the flow of water began or the alleged path of the flow and therefore, given the lack of foundation, it would be impossible to replicate the flow in any kind of

¹See Docket 28, p. 1-2; Docket 33, p. 1-2.

simulated study. Lastly, Defendants maintain that the videotape will be unduly prejudicial as it may tend to mislead or confuse the jury.² Kidwell has filed no response to Defendants' motion.

The Delaware Uniform Rules of Evidence provide that all "relevant evidence is admissible" and all "[e]vidence which is not relevant is not admissible."³ "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."⁴ Determining whether evidence is relevant is within the sound discretion of this Court.⁵

Applying these rules here, the Court finds that the portion of the videotape at issue is not relevant. The Court fails to see how a round ball could in any way demonstrate, let alone replicate, the movement and flow of water down the staircase where the accident occurred. What is more, as alluded to by Defendants, the record is devoid of any indication as to how much water was on the staircase (a factor which would surely affect the flow

² See Docket 33, p. 1-2.

³ D.R.E. 402.

⁴ D.R.E. 401.

⁵ *Mercedes-Benz of N. Am., Inc. v. Norman Gershman's Things to Wear, Inc.*, 596 A.2d 1358, 1366 (Del. 1991) ("Determination of relevancy [is] ... within the sound discretion of the trial court[.]").

of the water), where the flow of the water began, and the path of the water. As such, the ball demonstration can be nothing more than guesswork that would have no bearing on making the existence of any fact more probable or less probable. That portion of the videotape must, therefore, be excluded.

Based on the foregoing, Defendants' motion in limine is **GRANTED**. Since all deadlines for any pre-trial motions have elapsed, the Court expects this case to be ready for trial on September 4, 2007.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary